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THE ADMINISTRATION OF CIVIL JUSTICE IN MADRAS.

We have read the Report on the Administration of Civil Justice in the Presidency of Madras for the year 1893 and the order of Government thereon. We have risen from the perusal of the weary pages of statistics with a sigh of relief. From beginning to end the order is a quantitative appraisement of the work of judicial officers. We look in vain for any test of efficiency other than a numerically large disposal and a speedy determination of cases. There is no doubt a reference to the appeal test or the percentage of confirmation by the appellate tribunal, but the value of it is very low as it depends on the idiosyncracies of particular appellate judges. "The total number of suits ordinarily disposed of every year as well as of small causes" say the High Court, "exceeded the institutions and was greater than ever before attained." But this does not satisfy the Government. "It was less satisfactory to find," says the order, "that the average duration of contested suits and small causes was longer than in 1892." As regards the District Courts there was a great advance in the out-turn of appellate work, but "the courts did not altogether keep pace with the increase of business." In the case of the High Court the appellate litigation advanced under every head, but the Government pays a compliment "that the increase of business was well met." Thus wherever one may turn, the rage is for disposal and the largest quantity of work brings the greatest credit. The Subordinate Judge of Palghat, than whom it is more difficult to find in the service a more conscientious officer, is condemned as dilatory. and "his work shows unfavourably from almost every point of view." The High Court knows and the Government ought to know that the test of pre-

eminent judicial fitness is not celerity of despatch. It provokes a smile in the reader of the Government order to find a judicial officer praised by Government whom the profession and the suitors may agree in condemning and it gives needless pain to the honest and capable officer whom no favours can seduce into an unconscientious discharge of his duty to be told that he is dilatory. Why should not the High Court call for a return from time to time from the District Judges stating their opinions of the judicial qualities displayed by the District Munsiffs under them? The High Court itself must have opportunities in the trial of appeals and second appeals, to judge of the thoroughness and ability with which Subordinate Judicial officers do their work, and yet there is not a word in the report of appreciation of judicial qualities which do not appear in numerically large disposals. It may be that the Government is disposed to regard the whole judicial machinery as a means of determining litigation at the smallest cost, and it is natural that its observations should be directed against additional expenditure through any increase of that machinery. But it is surprising that the fever of large and quick disposal should have spread so far as to infect the High Court, the highest court of justice in the land. Their anxiety seems to be to turn out the largest quantity of work themselves and to exact from judges in the Moffussil conformity to the same standard. And yet the High Court is in arrear for a whole year of its work. Munsiffs or Subordinate Judges can have no time for the study of law in its various departments, or the acquisition of accomplishments which should be ornament to a judicial officer on the Bench. The judge of the High Court has no time for anything but the disposal of cases set down before him for hearing. We venture to doubt whether there is any judge of the High Court at present except one who is able to spare any time for the study of the reports, English and Indian, of the enactments that are issued by the legislatures here and in England, or of the treatises that appear from time to time in the various departments of law. All the time that our judges are not sitting on the Bench, they are either preparing their judgments or perusing calendars in criminal cases, or studying the cases which come on for hearing. It is a sad spectacle to see a judge of the High Court listening to arguments with one eye upon the hands of the clock and the other upon the practitioner. With the departure of *Mr. Justice* *Kernan* the words "time

is no consideration" have ceased to resound in the hall of justice. This state of things has begun already to tell upon the efficiency of our High Court Judges. We desire to speak with all respect and in no carping spirit. But who will say that the judges of the High Court of the present day will stand a fair comparison with the judges of twenty-five years ago? The work of the High Court has increased more than two-fold since that time, but the strength of the court continues the same. Judges used to sit but two or three days in the week and had leisure for study and reflection. But now the alternatives are, hopeless arrears or perfunctory judgments. Judge again by another standard. Take the last ten volumes of the Madras Series of the Indian Law Reports and compare them with the eight volumes of the Madras High Court Reports. No professional man of any discrimination can feel any doubt as to the result of such a comparison. Notwithstanding this, the cry for more work is coming from the Government, and the High Court responds and echoes the cry down through all the grades of the judicial service. If the Munsiffs and Subordinate Judges of to-day are better than their predecessors of twenty-five years ago, thanks to the University which has disseminated law and culture throughout the land, and not to the system which demands a larger and larger quantity of work to be turned out by them. As regards the conditions of recruitment of the High Court Bench, there has been no change. But the fact remains that the staff is inferior. The people have a great interest in our High Court judges being of the highest calibre and attainments. Living under a bureaucratic Government, a benevolent despotism as it has been called, the people look upon the High Court as the guardian of their liberties. It is their duty to see that the Court is maintained not merely in the possession of its powers and privileges, but also in the possession of that respect and confidence which are the true sources of its strength and greatness. Nothing can contribute towards the attainment of this end, as an increase in the staff of judges. Notwithstanding the transference of a portion of the original work of the High Court to the newly established City Court, we believe that there should be an addition of at least two judges to the strength of the Court. The additional expenditure involved will not be grudged by the country, and the Government will have the support of every right-thinking man, if it endeavours to perform the task of placing the High Conrt on a satisfactory

footing. The saving to Government from the Civil litigation of the country during the year 1893, was 14½ lakhs, or more than a third of the total receipts. There is absolutely no justification for the Government crediting this enormous surplus for the general purposes of the State and grudging the addition of two judges to the strength of the High Court, We have had the advantage of looking into the Administration Report on Civil Justice in Bengal for the year 1893. The Calcutta High Court consists of thirteen judges for doing the work which in respect of quantity is only about half as much again as that of the High Court of Madras. We do not desire to be understood as considering the number of judges in Calcutta too large. But that figure thirteen shows that the pressure of work on their Madras brethren is unduly heavy. In the year 1893, in Calcutta, the number of first appeals from decrees decided was 310; second appeals, 2,195; original suits, 766; original sessions cases, 48; insolvency cases, 135; first appeals from orders, 166; second appeals from orders, 224; criminal appeals and revisions from the Moffussil, 2,372. During the same period in Madras the number of first appeals from decrees decided was 259; second appeals, 1,953; original suits, 253; original Sessions cases, 46; insolvency cases, 196; first appeals from orders, 134; second appeals from orders, 4; Criminal appeals and revisions from the Moffussil, 1,515. The Calcutta report makes no mention of Civil revisions, but in Madras 703 cases of that class were disposed of during the year 1893. We are aware that it is not easy to compare the nature of the work, but there is no reason to believe that there is such an amount of disparity as to vitiate the result of the comparison. If Madras is treated on the same liberal scale as Calcutta, there can be no doubt that the argument for the addition of three judges to Madras is tenable. Calcutta, which is the centre of Government and has perhaps a more determined will of its own, has been able to enforce it upon the Government of India. It is however not a question of provincial rivalry with Bengal. We are only putting forward our claim to a just recognition of the wants of this province. If the people were sufficiently alive to the situation, they would agitate strongly for better treatment as regards the strength of the High Court.

There is another source of weakness in the High Court in another quarter. The District Judges from whose ranks one-third

of the Judges of the High Court are taken under the provisions of the statute are inspiring less and less respect every day, as regards their legal attainments and judicial capacity. With the growing improvement in the native branch of the judiciary, the marked superiority of the members of the Covenanted Service arising from their liberal culture which was making itself felt has ceased; and the feeling is growing that Covenanted servants should not all at once be appointed to the post of District Judge with Appellate Jurisdiction over the decisions of experienced and capable native judicial officers. Year after year orders of Government have furnished proofs of the unsatisfactory condition of things in this respect, and the Government remarks in its order under review "that it is impossible to view the results of the year with entire approval and in certain cases they can only be described as eminently unsatisfactory." For the prestige of District Judges being unimpaired, for the confidence of litigants in their judicial capacity being unshaken, and in the interests of efficiency, it is absolutely essential to improve the quality of European judicial officers in the Moffussil. A service that produced a Holloway, a Collet and an Innes seems now to be altogether a barren field from which it is futile to expect the growth of judicial eminence. We do not know whether there is anything in the recruitment of Civil servants in England to account for this result, but the disease is present which loudly calls for a remedy. The same blighting influences that operate in this province do not seem to exist in Bombay, for in the ranks of Civilian Judges of the Bombay Presidency, there seem to be men able to fill worthily the seats on the High Court Bench. But whether this is so or not, there can be no doubt of the state of things in this Presidency. And the Government in answer to a question recently put in the Legislative Council confessed that the position of affairs was not as satisfactory as it might be and told the Honorable Member who put the quesiion that it was devising some scheme for improving the quality of Civilian Judges in the Moffussil. We venture to suggest a scheme for giving some preliminary training in civil work to Covenanted Civilians before they are appointed to the responsible office of District Judge. There are 21 District Judges in the Presidency. Assuming that 4 of them may in course of time be members of the Provincial Service, the remaining 17 will be Covenanted Civilians. The number of Sub-Collectorships is 13. Prin-

cipal Assistants to the Collectors of Ganjam and Vizagapatam who hold the same rank as Sub-Collectors are 2 in number. The Registrarship of the High Court and the Secretaryship to the Board of Revenue may also be treated as on the same grade. The total number of these officers therefore is 17, and assuming that one of these may belong to the Provincial Service, there are 16 officers of the grade of Sub-Collectorship through one of which a Head Assistant has to pass, before he is made a Collector or a District Judge. These 16 offices are the training ground for 17 District Judgeships and 2 High Court Judgeships in the Judicial line, and in the Revenue line, to 20 Collectorships, (after deducting 2 for the Provincial Service) 4 Memberships in the Board of Revenue, and the places of 2 Members of Council and a Revenue Secretary and 2 or 3 other miscellaneous offices such as the Inspector-Generalship of Jails or the Residentship of Travancore, *i.e.*, the 16 offices of the grade of a Sub-Collector are the training ground for 19 offices in the Judicial line and about 30 offices in the Revenue line. The knowledge of Revenue matters possessed by a Head Assistant may be deemed to be sufficient for the place of District Judge. If 6 of the 16 officers of the rank of Sub-Collector, inclusive of the Registrar of the High Court, or 5 Sub-Collectors, are relieved of revenue work altogether and made Assistant Judges and invested with the powers of District Munsiffs and gradually of Subordinate Judges, every Head Assistant who chooses the Judicial line may be made to pass through the grade of Assistant Judge to the position of District Judge. The indiscriminate transfer from the Revenue to the Judicial line must cease altogether. After he quits the rank of Head Assistant, the Civilian must elect his career, or the Government must decide it for him once for all, and not change him from one Department to another afterwards except under very extraordinary circumstances. This scheme will give the Civilian a training of about 2 years in civil work before he is made a District Judge, and he will not, if it is adopted, present the undignified spectacle of learning the A B C of civil law from the practitioners in his Court. Although financial considerations have no legitimate place in the determination of this question, the scheme will not impose any fresh burdens exceeding the salaries of 5 Deputy Collectors who may have to be appointed for doing the Revenue duties hitherto done by 5 Sub-Collectors. This additional expenditure may be

prevented in one of two ways, one District-Judgeship may be abolished that of Kurnool or South Arcot, and the salary thus set free may be utilised for the appointment of one more Assistant Judge and the payment of the five Deputy Collectors. The Assistant Judges will render sufficient service in relieving the District Judges of a portion of their Sessions work, so that the abolition of the office of one District Judge is not likely to be of any inconvenience to the public. If this does not recommend itsel fto Government, the place of a Subordinate Judge may be abolished and his salary applied towards the payment of the salaries of the Deputy Collectors who must necessarily be appointed in place of the Sub-Collectors drafted into the judicial line. We are ourselves in favour of the former alternative as the District Court of Kurnool was some years ago considered unnecessary and it was only retained to appease the service that felt discontented at the abolition of the District Court of North Tanjore. We would earnestly press upon the authorities the consideration of this scheme or of any other on similar lines, if they will not lend themselves to bringing the European branch of the judicial service into contempt. A civilian will thus have larger experience of judicial work before he is appointed to the High Court Bench. That there will be a better field of selection for a place on the High Court Bench is itself a recommendation for the adoption of a scheme similar to the one we have suggested.

No cheese-sparing economy should influence the action of Government against the adoption of a measure calculated to improve the tone of the Judicial Service. If District Judges will thus be better trained than they are, it will be possible to introduce another important measure of reform as regards the Civil Courts Act. Unless the salaries of Subordinate Judges are raised considerably, we do not approve of the unlimited jurisdiction which is conferred on them under the Civil Courts Act. It seems to us that officers drawing salaries from Rs. 500 to Rs. 800, should not have to try suits involving property of several lakhs in value. Apart from the temptation to which an officer drawing only a salary of Rs. 500 may be exposed in trying such a cause, unjust suspicion is likely to tarnish his reputation. We would therefore recommend an upper limit of Rs. 50,000 to be fixed as regards the jurisdiction of Subordinate Courts. If this suggestion be acceptable to Government Act III of 1870 will have to be modified accordingly.

As we are dealing with the improvement of the quality of the judicial service, it is only pertinent to remark that the appointments made by the High Court to the post of District Munsiff are not altogether satisfactory. The Administration Report for Bengal for 1893 shows that out of 13 appointments of District Munsiffs that were made during the year, 4 were of M.A. B.L's. and the rest of B. L's. The High Court of Madras, on the contrary, has not given up the practice of appointing Translators, Head Clerks and Sheristadars as District Munsiffs. The number of graduates-in-law is rapidly increasing every year, and there is no justification for the High Court being satisfied with legal attainments of an inferior order. The appointments to the rank of Subordinate Judges are still less satisfactory. There are not more than three or four in their ranks who have earned the respect of the legal profession. We think that the High Court and the Government should depart from the practice of promotion by seniority and occasionally even of promotion from the subordinate ranks and make appointments directly from the ranks of the profession. A prize or two of that description will be a strong incentive to professional men in the attainment of excellence and a cause of wholesome rivalry between them and the members of the subordinate judicial service in the acquisition of legal knowledge.

There is a chapter in Mr. Srinivasa Raghava Iyengar's admirable Memorandum on the Progress of the Madras Presidency devoted to the costliness of justice. We do not know what the Government has done with the suggestions contained in that Memorandum. He regards the costliness of justice as a potent factor in the impoverishment of the agricultural population. A simpler machinery for the disposal of petty litigation with finality attached to its decisions is a great desideratum. Village Courts as at present constituted are unsatisfactory and do not command the confidence of the people. The improvement of their constitution enacted in Madras Act I of 1889 has not been carried out by Government even in the more intelligent parts of the Presidency. It is impossible therefore to pronounce any opinion on the possible effect of their improved constitution upon the litigation of the country. If the improved constitution were introduced more largely, the question might then be taken into consideration whether the village Courts might not be made the sole tribunal for petty claims, instead of being as now

an alternative machinery to the Small Cause Courts. It would also be a matter for consideration whether their constitution could not be further improved and their jurisdiciion enlarged. The regular Courts of First Instance in the Moffussil might also be strengthened by the addition of more judges to each Court and the system of Appeals and second Appeals tantalisng the unhappy litigant curtailed to a certain extent. The attitude of the authorities seems to be that the present judicial machinery is perfect and needs no revision or improvement. We think a Commission should be appointed for the purpose of investigating whether we are proceeding on the right lines and whother some improvement might not be effected by a change in the system of administering justice. With the Memorandum of Mr. Srinivasa Raghava Iyengar in its hands, the Government might have called for a report from the High Court upon the validity of the impeachment he has made against the present system. The fact is that nobody seems to have any time for anything except the counting of cases disposed of. The Government is so satisfied with the present condition of things that it has requested the High Court to introduce the *ad valorem* system under the Court Fees Act on the Original Side of the High Court. The Government is not satisfied with the surplus of 14½ lakhs and wants more money by taxing justice. We have no hesitation in saying that the scale of fees charged on the Original Side should continue, if only for the purpose of comparison with the rival system obtaining throughout the Moffussil. There is much in principle to recommend its continuance. The Administration Report of the High Court goes into unnecessary details as remarked by Government, and a comparison of it with the Report in Bengal suggests the advisability of simplification. Questions of principle like those we have dealt with in these pages should receive some attention in the Report.

THE POLICE AMENDMENT BILL 1894.

The Bill introduced by the Honorable Sir Antony MacDonnell in the Viceregal Legislative Council to amend the Police Act V of 1861 deserves very careful consideration as one calculated to produce momentous changes in the relations of the various races constituting the Indian community to each other and to Government. The bill is exceptional in its character as vesting in the

executive large powers of a judicial nature to a degree hitherto unknown even in this country. The Hon'ble mover felt the importance of the measure he undertook to patronise, for he observed "These are important additions to the existing law, and I think that the public should have full opportunity of examining and criticising them before we proceed further to legislation. In accordance then with rule 20 of the Rules for the conduct of Legislative business, I wish with Your Lordship's permission to postpone the discussion on the principle of the amendments until the full Council assembles in Calcutta. My object now is to have the Bill published for general information in order that when the time arrives for referring it to a select committee, I shall have as it were, felt the pulse of public opinion and be in a position to explain away doubts and justify the proposal, with even fuller knowledge of that opinion than I now possess." Sir Antony would, to our mind, have done better, if before submitting the measure to the criticism of the public, he had laid before them the reasons which actuated him to propose it and the considerations which induced him to place such an unusual amount of confidence in the executive as to justify the transference to it of powers which *prima facie* would be better exercised by a judicial body. In the absence of such a statement by the author of the proposed legislation, we can only discuss its soundness on the materials available to us from its antecedent history and the circumstances under which it has come into existence. Before making our remarks on the Bill, we shall state the main provisions which are of general importance. The first of these provisions is an amendment of S. 15 of the existing Act. That section provides for the quartering of additional police in any tract which is declared to be in a disturbed or dangerous condition and the charging the inhabitants thereof with the cost of such additional police force; according to the existing law, the cost must be apportioned among the entire population of the tract. The amendment proposed is to the effect that Government should be empowered to include in the assessment non-resident owners of property if, in the circumstances of the particular case that be fair and just, and to exclude from assessment those people or classes. who have not contributed to the disturbances, the cost of maintaining the additional police being levied only from the persons or classes who have caused such disturbances. The second important provision

which is an alternative to the provision just noticed enables the Government to levy compensation from a disturbed locality for serious outrages committed therein and pay it away to the persons who have been injured or to their families. The third provision is the grant of licenses for processions when there is any reason to apprehend a breach of the peace, if the procession were allowed to be conducted without conditions or control. There can be no doubt that these amedndments were suggested by the occurrence of a number of unfortunate religious riots that have disturbed the peace in various parts of the country, notably in the North-West Provinces and in the cites of Bombay and Poona. The Hon'ble mover was apparently impressed with the injustice of making the whole population pay where only a few are at fault, and especially where one of two rival communities is ill-treated amd oppressed by the other, of making the suffering party pay for the police that are intended to restrain the violence of their oppressors. There is certainly much force in such an argument, and indeed there would be force in arguing that even where the question is not complicated by the existence of rival factions, the peaceful inhabitants whose peace is disturbed should not be made to pay for the wrongs committed by their restless brethren. Such powers however are found necessary, and the Indian legislature does not stand alone in sanctioning special taxation for such purposes, though it undoubtedly goes further than other countries have thought fit to do. Similar provisions exist in England, but there is one important distinction between the legislation of the two countries, *viz.*, that while here, the powers under the special act are vested in the executive, in England it is entrusted to magistrates. The Act for amending the laws relative to the appointment of special constables and for the better preservation of the Peace 1 and 2 Will IV. Ch. 41 S. 1 empowers two or more Justices of the Peace upon the oath of any credible witness that any tumult, riot or felony has taken place, or may be reasonably apprehended in any parish, township or place . . . . . to appoint special constables for the preservation of the public peace, and for the protection of the inhabitants and the security of property. Section 13 of the same statute authorises the payment of such special constables out of the county rate, but the Act does not authorise the levying of special contributions for the expenses of the additional police; we cannot but think that the Indian law which

entrusts the power of appointing additional police to the executive is not an improvement on the English statute. But this observation applies far more strongly to the provisions of the proposed amending Bill. The Act for the Payment of constables for keeping the peace near Public Works which authorises the appointment of special police where it is necessitated by the behaviour of persons employed on rail roads, canals or other public works, and the charging of the expenses of such police upon the companies carrying on the works, vests all the powers under the Act in justices of the peace. We think the considerations for casting such responsible duties on judicial officers are stronger in this country than elsewhere. The community consists often of rival sects of Hindus, Mahomedans, or Christians, and in some places one of such communities is numerically much weaker than its rival, but at the same time it is sometimes the fact that the former are of more martial habits than the latter and are consequently regarded by the executive as the more important factor to be reckoned with. In such cases the task of determining which party is the delinquent is of an extremely delicate nature, and it is supremely important that the decision arrived at should command the confidenceof both the communities; for any feeling that Government is partial to either race must result in most unfortunate consequences. In the interests of the Government itself, every step should be taken to prevent such a suspicion, and there seems to be no better method of doing this than by enacting that where a special police force is quartered on a disturbed tract, and the maintenance of the force levied from its inhabitants, any attempt to exempt any community, or any individual from taxation should be made by means of a judicial investigation. This will afford some guarantee that the executive will not attempt to exculpate any class, except where there are strong grounds for doing so, and a judicial decision will put an end to all suspicion of favoritism on the part of the officers of Government. Such a power of deciding who is guilty and who is innocent is not given to the executive in any other country, so far as we are aware, and we think that the executive officers of Government may well object to such a responsibility being cast on them. The inexpediency of the amendment would be manifest, if we referred to one single instance that must be fresh in the minds of many. Suppose the executive had been called upon to exercise the power

proposed to be given by the amendment with reference to the recent Poona Riots. So far as we can judge from the utterances of responsible officers, there can be no doubt that the executive would have exempted the whole Mahomedan community and levied the whole tax from the Hindus; and yet the sessions court of Poona pronounced the Hindus free from blame and held that the Mahomedan were the cause of the affray. What a travesty of justice there might have been if *Sir Antony MacDonnell's* Police Bill had been law and in operation in Poona? The executive are likely to suppose that the numerically larger race is to blame in all cases of collision, and whether their decision is right or wrong, it is not likely to command confidence. It is likely moreover to create an undesirable rivalry for official favour, which is highly detrimental to social harmony. In the interests of peace and mutual good will and of Government alike, we think the executive should not be invested with such a power. At the same time we are not prepared to affirm that it would not be advisable, nay, necessary, sometimes to perform the difficult task of fixing the guilt upon the guilty class and saving the innocent from the punishment brought on by the misdeeds of their enemies. What we contend for strongly is that this duty should be entrusted to a judicial body. How is this body to be constituted? Although it is not necessary for our purpose to find a precise or definite answer to this, we would say a word on it for the consideration of the legislature and of the public. We promptly recognise the fact that the person mainly responsible for the peace of the district, we mean the chief executive officer thereof, should have a voice in the determination of the question. We would associate with him the chief judicial officer of the district, or if he cannot be spared for the purpose, any other judicial officer of standing and experience to be appointed by Government, and to those it may be well to add one or two more individuals of trust and position, who may be chosen from the communities concerned in the decision of the question. A decision by such a tribunal, besides being above all suspicion, will by its public nature be a strong lesson to the party adjudged guilty which they are not likely soon to forget.

The second alternative provision is in reality of the same nature and founded on the same principle as the proposal we have dealt with and is open to the same objections.

The bill proposes to make non-resident owners of property responsible for the disturbance of the peace "if in the particular circumstances of the case, that be fair and just." What circumstances are to be deemed as rendering it 'fair and just' to make absent persons responsible is not mentioned. We presume it could not be intended to inflict punishment except where, notwithstanding their absence from the scene of the disturbance, they can be proved to have in some way or other instigated it. If so, there cannot be the slightest objection to stating it clearly. If on the other hand, the object of the mover be to lay a duty on all owners of property whether they are present or not, to keep the peace, we cannot but characterise such a policy as unjust and inexpedient. Possibly, the intention is to make the owners responsible for the conduct of their agents or servants, but here again we fail to see the propriety of casting a responsibility that cannot possibly be properly discharged. The mover seems to be providing for extreme crises which will justify heroic measures, but he has not been pleased to make himself intelligible to the public whose criticism is courted.

The third and last important provision in the Bill proposes to regulate processions, where necessary, by means of licenses. We think the suggestion is a very good one, but must again say the duty is one that can be more satisfactorily discharged by a magistrate, who will act on judicial principles. In England the granting of licenses for such purposes is vested in justices of the peace, not in the Police, and in many cases the action of the magistrates is liable to revision by the High Court of Justice, such as licenses to keep houses of entertainment, liquor shops &c. There is no reason for trusting the magistracy here with less discretion and the Police with more, than in England.

NOTES OF INDIAN CASES.

Sankunni Nayar v. Narayanan Nambudri, I.L.R., 17, M. 282. The object of section 317 of the Civil Procedure Code is to prevent *benami* purchases at execution sales. Relief is therefore denied to a person who brings a suit against the certified purchaser on the ground that the latter is a *benamidar* for him. But the section was not intended to interfere with the law of principal and agent and prevent the principal from

acquiring property through his agent. If there is a subsisting relation of principal and agent, and in the course of the agency, the agent purchases property in his own name for his principal, he holds it for the benefit of the principal. It may be said that in every case in which one person is instructed to purchase property in his own name for another, there is a case of agency. But we do not think that such agency for the nonce can be recognized as a ground for not applying the section, as it will render the section altogether nugatory. Notwithstanding the rather broad language of the section, we think the Madras High Court is right in holding it was not intended to enable an agent who has purchased property for his principal to withhold it from the latter.

Velu Pillay *v.* Ghose Mahomed, I.L.R., 17 M, 293. To constitute a mutual account, there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. As observed by the learned judges, a shifting balance now in favour of one party and now in favour of the other may be a test of mutuality, but its absence is not conclusive proof against mutuality.

Kunhanujan *v.* Anjelu, I.L.R, 17 M, 296. If a lessee transfers his interest absolutely or by way of mortgage or sub-lease, the assignor becomes liable for rent accruing due after the date of the transfer, even though he has not taken possession of the property. The liability is based on the privity of estate created by the assignment between the assignor and the lessor. The fact that the lessor can proceed against the assignee for rent does not deprive him of his remedy against the original lessee, see Woodfall's Landlord and Tenant 11th edition p. 238, Transfer of property Act section 108 cl, (J).

Tirtha Sami *v.* Seshagiri Pai, I. L R., 17 M, 297. The Madras High Court has followed the Allahabad and Bombay High Courts in holding that the words "defect of jurisdiction or other cause of a like nature" occurring in section 14 of the Limitation Act must be strictly construed and that a plaintiff whose suit has been dismissed for misjoinder of causes of action and parties is not entitled in a subsequent suit for the same relief to deduct the time occupied by the former suit.

Palamalai Padayachi *v.* Shanmuga Asari, I. L. R., 17 M, 302. The Madras High Court frequently adopts a very convenient way of solving questions referred to the Full Bench. A reference is very often made to the Full Bench because of a conflict between previous decisions.

But when the learned judges meet on the Full Bench, they discover a perfect harmony between those decisions and solemnly hold that they have been unnecessarily called together. So far as the decision in this case goes, we are not prepared to say that it is wrong. But we must be permitted to express our disappointment that their Lordships do not grapple with the real difficulties of the case.

The plaintiff brought a summary suit against the defendant in the Court of the Head Assistant Collector under Madras Regulation VI of 1831 for possession of the plaint lands claiming them as *Manyam* lands attached to his hereditary office of Village carpenter. He obtained a decree in his favour which was confirmed on appeal to the Collector. But the Collector having remarked in his judgment that there was no machinery for carrying out the decree under the regulation, the plaintiff's application for execution was refused by the Revenue Court and he was referred to the Civil Courts. He then brought the present suit in the Civil Court for recovery of the lands. When the litigation reached the High Court, the Full Bench of the High Court decided that the jurisdiction of the Civil Court was excluded by section 3 of the regulation. The unfortunate suitor is tossed like a shuttlecock between the Civil and the revenue Courts and an acknowledged legal wrong goes without a remedy.

Shunmuga Pillay v. Ramanathan Chetti, I.L.R., 17 M, 309. This is an elaborate decision of *Mr. Justice Muthuswami Aiyar* dissenting from *Gokul Kristo Chunder* v. *Aukhil Chunder Chatterjee* (I. L. R., 16 Cal. 457) and *Durga Charan Majumdas* v. *Umatara Gupta* (I.L.R., 16 Cal. 465) and holding that the court to which a decree is transferred for execution under S. 223 of the Civil Procedure Code need not be a court of equal pecuniary jurisdiction with the court which passed the decree but may be a court of inferior jurisdiction.

Subramanya Pandya Chokka Talavar v Siva Subramanya Pillay, I. L. R, 17 M, 016. This case contains an elaborate exposition of the law relating to the succession to impartible property. The conclusions arrived at by the learned judges after a lengthy examination of the authorities are (1) that in determining the right of succession to an impartible estate, the class of kindred from whom a single heir is to be selected should be first ascertained (2) that in the absence of a special custom laying down a special rule of selection, seniority of age constitutes a title by descent to the impartible estate (3) that as in the case of partible coparcenary property, nearness of blood is no ground of preference for succession to an impartible Zemindari under the Mitakshara

and that in such a case the claim of the half-brother if senior in age is superior to that of the full brother.

Bhagbut Lall v. Narker Roy, I. L. R., 21 C, 789. Where on appeal a sale has been set aside under S. 294 of the Civil Procedure Code there is clearly no second appeal. A second appeal will lie, only if the order can be treated as a decree. Orders mentioned in S. 588 are not within the definition of a decree (S. 2) even though they determine matters referred to in S. 244. An order under S. 294 being specified in S. 588, there can be no second appeal.

Queen Empress v. Gunning, I. L. R., 21 C, 782. The trial of a British seaman for an offence committed on board a British ship on the High Seas must be conducted under the Code of Criminal Procedure Code, though the offence must be one under the English law.

Narayani Dasi v. Administrator General of Bengal, I. L. R., 21 C, 683. The real intention of a testator may be defeated by the construction of the courts of the language employed by him, Although in India there are no artificial rules of construction applicable to Hindu wills, the courts can only gather the intention from the language employed, however much the presumed intention may differ from the actual intention of the testator. A gift of property to the son subject to the maintenance of the daughter passes it to the son free from all claim for maintenance where the daughter marries afterwards into a family in which she is in no need of any provision. As the daughter is not entitled under the Hindu Law to maintenance from her father after she is married and as provision is made only as maintenance, the learned judges hold that in the circumstances she is not entitled to claim it under the will.

In the goods of Kamineymony Bewah, I. L. R., 21 C, 697, It is clear law that a person having no legal interest in the property of a deceased testator cannot apply for revocation of probate. Where a testator is a prostitute and the property was acquired by her after she became a prostitute, *Mr. Justice Sale* holds that a person claiming as her husband's sister's son has no interest entitling him to apply for revocation of probate. We doubt whether the degradation from caste resulting from prostitution severs the relationship between the prostitute and the members of the family in which she was born or into which she was married, so far as to render it impossible for them to inherit her gains of prostitution in any case. A prostitute sister or the children born

after prostitution may be preferential heirs. There is no rule laid down as observed by the learned judge, in the Hindu texts. Custom regulates succession in the dancing-girl caste. But as to other prostitutes there is no reason to hold that prostitution effects a complete severance from the family so as to destroy all heritable capacity in the relations to the prostitute's property. The cases relied on were cases of competition between the relations prior to prostitution and those who were members of the prostitute family.

NOTES OF ENGLISH CASES.

Ives and Backer *v.* **Williams**, 1894, 2 Ch., 478. An arbitration clause between a company and a contractor that any dispute should be decided by the Engineer of the Company as arbitrator is not invalid on the mere ground that the Engineer becomes substantially a judge in his own cause, unless there be good reasons to believe that he will act unfairly.

Skinner and Co., *v.* **Shew and Co.**, 1894. Ch., 581. In an action for damages sustained by the defendant threatening the plaintiff with legal proceedings for an infringment of a patent of the defendant, the plaintiff showed that in consequence of the threat, he had lost the benefit of a contract for the exclusive use of manufacture by a Company. Held that the measure of damages in such a case was the profit which the plaintiff would have derived if the contract had been carried out. A letter by the solicitors of the Company to the plaintiff declining to continue the negotiations for the contract in consequence of the defendant's threats is admissible to prove the damage.

In re **Brooke Brooke** *v.* **Brooke,** 1894, 2 Ch., 600. A conveyance of land and buildings used for a business passes the fixed trade-machinery on the premises; and therefore, though the machinery may be expressly mentioned the conveyance is not a bill of sale.

Smith *v.* **Hancock,** 1894, 2 Ch., 377. The Court of Appeal *Lindley, L. J.*, and *A. L. Smith, L. J.*, (*Kay, L.J. dissentiente*), affirmed the judgment of *Kekewich J.* 1894, 1 Ch., 209 (see 4 M. L. J. p. 95) and held that a person does not break an "agreement not to carry on or be in any wise interested in the business of a wholesale or retail grocer and provision dealer and baker or any of them "by helping his wife who started a grocer's shop by introducing her to bankers, or by writing a circular for her, inviting 'old friends' to come to the shop or intro-

ducing his wife's agent to wholesale merchants who had supplied the old business, and that the word 'interested' in the agreement must be taken to have been used to prevent the defendant from having any "proprietary or pecuniary interest" in any similar business.

In re **Securities Insurance Company**, 1894, 2 Ch., 410. On the application of the Liquidator of a company, an order was made by a judge sanctioning an arrangement under the Joint Stock Companies Act. Held following the ordinary Chancery Practice that persons affected by the scheme as creditors who did not appear before the Judge could not appeal against the order without leave. Note that a similar rule will apply also to decisions under S. 30 of the Civil Procedure Code affecting a class; but there is no provision in the Code for granting leave to persons interested who do not make themselves parties in the first Court.

In re **Hodson. Williams**, *v.* **Knight**, 1894. 2, Ch., 421. A married woman after attaining the age of twenty-one may ratify a settlement executed by her while an infant before her marriage. Her covenant was only voidable, not void; and coverture is no bar to ratification of such a voidable covenant, *Chitty, J.*

In re **McHenry. McDermott** *v.* **Boyd**, 1894, 2 Ch., 428. A creditor who had proved in the bankruptcy of a debtor for £25,000 assigned his debt to two trustees (to whom other creditors also assigned their debts) with a view to the annulment of the bankruptcy. The assignment was ostensibly in consideration of the payment of £ 2,000 by the trustee, but in reality in consideration of a further promise (which was concealed from the court) of the bankrupt to pay him 6,000 £ more. The bankrupt having died, the creditor claimed in an action for the administration of his estate to prove for the £ 6,000. Held that the secret agreement which was the basis of the suit was invalid, and on the rule, *In pari delicto potior est conditio defendents*' the claim must fail, *North, J.*

Aldin *v.* **Latimer Clark, Muirhead and Co.**, 1894, 2 Ch. 437. A, grantee of land does not acquire, when the grant is merely in general terms, a right of easement to the access of air, except when there is a definite aperture in the nature of a window on the property granted, or definite channel over the adjoining property, but when a landlord demises part of his property for carrying on a particular business, he is bound to abstain from doing anything on the remaining portion which would render the demised premises unfit for carrying on such business in the way in which it is ordinarily carried on. When the lease is granted for carrying on business as a timber merchant, the lessor cannot

build on the adjoining property, so as to interrupt access of air to sheds on the demised property used for drying timber. When the lessor permitted the construction of ventilators in the walls of the demised building at the lesseee's own cost and without receiving any consideration, held that this amounted only to a license and the lessor or his assignee could not be enjoined from building so as to obstruct the ventilators, but the lessee would be entitled to damages, when the obstruction is made without reasonable notice, *Stirling, J.*

Warren v. Murray, 1894, 2. Q. B., 648. The owner of land agreed to grant leases of houses when erected on such land by the intended lessees. The latter became entitled to two of such houses for a term of years. No lease, however, was granted, but the intended lessees and their representatives continued in possesion during the term, under such circumstances, that a Court of Equity would have decreed specific performance of the agreement for a lease.

Held that during such term of years the Statute of Limitations did not run against the owner of the land as he had an effective right of entry or action for the recovery of the land.

Per Kay, L. J. An intended lessee so let into possession is a *cestui que trust* under the proviso to S. 7, of the Real Property Limitation Act of 1833 and therefore the operative part of the section does not apply to this case.

Scholfield v. Earl of Londisborough, 1894, 2, Q. B., 660. A bill of exchange for £500 was after acceptance fraudulently altered by the drawer into a bill for £ 3,500. The stamp upon which the bill was drawn was sufficient to cover the larger amount. But the bill when accepted was not in other respects so drawn as to make the acceptance in that form a negligent act on the part of the acceptor. In an action against the acceptor by a *bona fide* holder for value,

Held that the mere fact that the defendant accepted the bill drawn on a stamp of a higher value than it need have borne was not evidence of such negligence on his part as to estop him from setting up the subsequent alteration of the bill as a defence to the action.

Held further that the bill did not by reason of the alteration become a new bill requiring a fresh stamp.

Per curiam, a person who signs a negotiable instrument with the intention that it shall be delivered to a series of holders incurs a duty to those who take the instrument not to be guilty of negligence with

reference to its form. If he signs it in blank, he is responsible for any amount the stamps will cover. If he signs it negligently in such a shape as to facilitate alteration, a necessary result is responsibility on the altered instrument. See *Yeung v. Grote*, 4 Bing, 253.

Eckersley Mersey Docks and Harbour Board, 1894, 2 Q. B., 667. The rule which applies to a judge or other person holding judicial office that he ought not to hear cases in which he may be suspected of a bias in favour of one of the parties does not apply to an arbitrator named in a contract to whom both the parties have agreed to refer disputes which may arise between them under it. To disqualify such an arbitrator circumstances must exist which establish at least a probability that he will in fact be biassed in favour of one of the parties in giving his decision.

When in a contract for the execution of works, the arbitrator selected by the parties is a servant of one of them, he is not disqualified by the mere fact that under the terms of the submission he may have to decide disputes involving the question whether he has himself acted with due skill and competence in advising his employers in respect of the carrying out of the contract

Robinson *v.* **Geises**, 1894, 2, Q.B., 685 Where an action is brought against several joint-contractors, all of whom are within the jurisdiction, the action will not be stayed on the ground that one of the defendants has not been served, if it appears that the plaintiff has done everything in his power to effect service.

Wieland *v.* **Bird**, 1894, P., 262. The functions of an administrator *pendente lite* terminate with a decree pronounced in favour of a will with executors.

Semble, the case is the same if there be no executors.

In the goods of Kinchella, 1894, P., 264. Under S. 73 of the Probate Act 1857, a grant of administration may be made to the representative of the next of kin of an intestate without citing a person entitled in distribution.

MISCELLANEOUS.

We beg to acknowledge with thanks the receipt of the following legal publications :—

The Canada Law Journal for September (*in exchange*).

The Canadian Law Times for September (*in exchange*).

The Green Bag for September (*in exchange*).

The Western Law Times for September (*in exchange*).

The American Law Review for September and Oct. (*in exchange*).

The Brief for October (*in exchange*).

Law-reporting in India:—Our remarks upon Indian law-reporting have received the support of no less a lawyer than Sir Frederick Pollock. In his Tagore Lectures on Fraud, he writes "According to the common and and most reprehensible habit of current Indian reporting, the report seems to have been made up from the pleadings and judgments without any independent attention to the arguments or to the evidence." Surely after this and the remarks of the Calcutta High Court we quoted some time ago, the Government of India should re-organise the system of Indian reporting and place it on a more satisfactory basis.

Divorce in Europe—*Mr. Henniker Heaton* having diligently pounded away for years at the stone wall of post office methods, has, by way of variety, turned his attention to the little ironies of divorce law. There are plenty of them, and Mr. Henniker Heaton, who is vigorous of arm, rattles the basket with considerable effect. Here are some of his figures: "In England there is one divorce to 577 marriages, in Russia 1 to 450, in Scotland 1 to 331, in Austria 1 to 184, in Belgium 1 to 169, in Hungary 1 to 149, in Swedeen 1 to 134, in Holland 1 to 132, in Baden 1 to 100 in Romania 1 to 49, in France 1 to 87, in Germany 1 to 62, in Prussia 1 to 59, in Denmark 1 to 36, in Saxony 1 to 33, in Switzerland 1 to 21, in Italy 1 judicial separation to 421, in Berlin 1 divorce to 17, in Vienna 1 to 43, in Paris 1 divorce or separation to 13" After this one almost fears the rivival of that exasperating question, "Is marriage a failure."—*The Brief*.

The Lawyer. Adolphus, the criminal lawyer, said that the Judges in his time were much impressed with the following table of degrees: getting on; getting on-er (honour); getting on-est (honest). The judge, he says, acknowledged that there was much sad truth in this jingle.—*The Brief*.

A perverse verdict.—Some good stories are going the rounds concerning *Sir Mathew Begbie*, Chief Justice of British Columbia, who died the other day. Here is one of them. In 1883 a man was charged in Victoria with having killed another man with a sand-bag, and in the face of the judge's summing up the jury brought in a verdict of not guilty. This annoyed the Chief Justice, who at once said, "Gentlemen of the jury, mind, that is your verdict, not mine. On your conscience will rest the stigma of returning such a disgraceful verdict. Many repetitions of such conduct as yours will make trial by jury a horrible farce and the city of Victoria a nest of immorality and crime; so I have nothing more to say to you." And then turning to the prisoner, the Chief Justice added:

Privy Council. That in the Colonies to which we have referred the decisions of the Judicial Committee as at present constituted are regarded with anything but the respect to which they are entitled, we do not for one moment believe. Nor is there any ground for the allegation which some in their haste have made, that the admission of Colonial Judges to the Privy Council ought to have been conceded long ago. Indian Jurisprudence was so technical and peculiar in character that the presence of experts with local knowledge of it in what was to be the Supreme Court for Indian Appeals was obviously indispensable. But the various systems of Colonial Jurisprudence that the Privy Council had to administer stood on an entirely different footing. The development of Colonial law closely followed the development of our own law and its departures from the English standard were not of serious importance. Moreover, the great fundamental *genera of* which all systems of jurisprudence are species have long been fully represented in the Judicial Committee. Our Indian Judges supplied the board with the knowledge of Hindu and Mohammedan law necessary to enable it to determine appeals not only from India, but in later times from Cyprus and various Consular Courts in the Levant. The Scotch legal members of the Judicial Committee, foremost among whom stands the commanding figure of *Lord Watson* represented the French and Roman-Dutch Colonies with great fidelity; while Colonial legal systems of strictly English descent had their representatives in the English Judges, of whom the majority of the Judicial Committee is composed. The time, however, has now come when the constitution of the Judicial Committee needs to be revised from the Colonial standpoint. In Canada, in Australasia, in South Africa problems are arising, and legislative departures are being taken for which there are no counterparts or prototypes in English legal or social life; and these great possessions of the English Crown are entitled to claim a voice in the ultimate decision of the issues to which they give rise. The bold and statesmanlike precedent set by Lord Rosebery of appointing a colonial clergyman to an English bishopric ought to be followed on the earliest possible occasion by the transfer of an Australian Judge to the Privy Council. The Australasian Colonies have the first claim to an appointment of this kind. But the turn of Canada and Soth Africa will come next. It is to be hoped that this desirable reform will not be prejudiced by the foolish suggestion that Colonial Judges should occasionally be promoted to the Bench of the English Supreme Court. As a leading Canadian contemporary well observes, it will be time enough to embark on an enterprise of this kind when Colonial lawyers are willing to see their English brethren appointed over their heads to vacancies on the

Colonial Bench. And apart altogether from such considerations English practice is too technical a science to be mastered by a judge after his elevation to the Bench. There is, however, an unanswerable case for the main demand which our greater Colonies are now putting forward. And while the reform of the Privy Council is in the air, we hope that the need for a revision of the absurd practice by which one member of the Judicial Committee pronounces the decision of the whole body, and no corroborating or dissenting voices are heard, will not be ignored. The effect of this procedure is to detract from the authority of the Judicial Committee without adding anything to its dignity.—*The Law Journal.*

Action against some of several Joint-debtors.—The rule that an unsatisfied judgment against one or two joint debtors is a bar to an action against the other was established beyond question by the decision of the House of Lords in *Kendall* v. *Hamilton*, 48 L. J. R, C. P. following *Kiug* v. *Hoare*, 13 M, and W. 494. The principle cannot, however, commend itself to the sense of justice of any one not enamoured of legal technicalities. Eminent lawyers have justified it on the grounds that multiplicity of actions should be avoided and that the creditor's inferior remedy has been merged in the higher one which the judgment bestows upon him. The humorous side of the latter reason will probably not appeal to the unpaid creditor. He will prefer to say, with Lord Penzance, that the rule is one which, without asserting any rights on the part of the debtor, desires the aid of the law to enforce those of the plaintiff. The most that can be said for the other reason is, according to the same distinguished authority, that by two actions being brought instead of one, additional costs have been incurred, but where the plaintiff has acted unreasonably in this respect the court has ample power to prevent injustice to the defendant. In *Cambefort* v. *Chapman*, 56 L. J. R, Q. B, 639, the Divisional Court applied the rule, where the first action was on a bill of exchange given by one joint-debtor alone and the second action was against the other debtor on the original debt. Last week the Court of Appeal overruled *Cambefort* v. *Chapman* in *Wigg Proser* v. *Evans* on the ground that the priciple of *Kendall* v. *Hamilton* only applies where the cause of action is the same in both cases. The distinction is, perhaps, as technical as the rule, but any limitation of the latter is welcome.—*The Law Journal.*

Preventing one from entering into a contract. In *Wright* v. *Hennessey*, which was an application for an injunction heard by *Mr. Justice Wright* and *Mr. Justice Collins*, on November 1, the court refused to extend the

rule laid down in the Court of Appeal in *Temperton* v. *Russell*, 62 L. J. R, Q. B. 412; L. R, (1893) 1 Q. B. 715 and to say that to prevent one man (by mere persuasion or other lawful means) from making a contract with another is an actionable wrong against the latter. It is admitted that the case cited goes so far as to say that the act in question, if done by two or more in combination, becomes conspiracy, and is then provided with a remedy at law; but *Mr. Justice Wright* gave it as his opinion that, although a man may be sued for persuading a contracting party to break an existing contract, no case has decided that an action will lie against the former for preventing the contract from actually being made. This will be welcome news to the organising secretaries of trades unions, to whom the decision in the famous case of *Temperton* v. *Russell* came as a crushing blow.—*The Law Journal.*